

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

CONSTRUCTION SAFETY STANDARDS COMMISSION

GENERAL INDUSTRY SAFETY STANDARDS COMMISSION

OCCUPATIONAL HEALTH STANDARDS COMMISSION

PART 42. HAZARD COMMUNICATION

PART 92. HAZARD COMMUNICATION

PART 430. HAZARD COMMUNICATION

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FORWARD

BACKGROUND TO MICHIGAN'S RIGHT TO KNOW LAW & HAZARD COMMUNICATION STANDARDS

The Michigan Occupational Safety and Health Act (MIOSHA) was amended in 1986 to include requirements for the communication of information regarding the safe handling of hazardous chemicals present in Michigan workplaces. These amendments were called the Michigan Right To Know Law. The amendments also enabled the adoption of the federal Occupational Safety and Health Administration's (OSHA's) Hazard Communication Standard (29 CFR 1910.1200), which was designed to make information available to employees exposed to hazardous chemicals in their workplaces.

Sections of the Michigan Right To Know Law of particular importance address the following employer responsibilities:

- Posting the location of material safety data sheets (MSDSs).
- Posting the receipt of a newly received or revised MSDS no later than five (5) working days after its receipt.
- Identifying the contents of pipes or piping systems which contain a hazardous chemical.

Additionally, the law discusses the employee's right to request MSDSs from their employers. Employees are also afforded protection from any discrimination or discharge resulting from the request of information regarding hazardous chemicals under the law.

The Federal Hazard Communication Standard adopted by the law addressed the following major components:

- Evaluation of hazardous chemicals (development of MSDSs)
- Written hazard communication programs
- Labeling of hazardous chemicals
- Maintaining MSDSs
- Employee information and training
- Trade secrets

In 1994, federal OSHA amended the Hazard Communication Standard (29 CFR 1910.1200) and, effective June 19, 1995, Michigan adopted the amended federal standard by reference. The amendments essentially added clarifying language, two new sections, and a new appendix to the standard.

The new advisory appendix E was included to provide employers who do not import or produce chemicals with a guide to help them determine their compliance obligations under the standard (29 CFR 1910.1200). The first new section addresses the retention of United States Department of Transportation (DOT) markings, placards, and labels. The second new section mandates that the following federal standards shall apply to agricultural operations:

- 29 CFR 1910.142 Temporary labor camps (Part 511)
- 29 CFR 1910.111(a) & (b) Storage and Handling of Anhydrous Ammonia (Part 78)
- 29 CFR 1910.266 Logging operations (Part 51)
- 29 CFR 1910.145 Slow-moving vehicles (Part 37)
- 29 CFR 1910.1200 Hazard Communication (Part 42, 92, & 430)
- 29 CFR 1910.1201 Retention of DOT markings, placards and labels.

This document has three important parts containing information regarding Michigan's Right To Know Law and the enforcement of hazard communication regulations in Michigan.

The first includes those sections of the MIOSHA Act which contain provisions to the Michigan Right To Know Law.

The second part comprises the first three rules of the Michigan Hazard Communication Standards promulgated by the Construction Safety Standards Commission, the General Industry Safety Standards Commission, and the Occupational Health Standards Commission. These first three rules of each standard each adopt the amended Federal Hazard Communication Standard and federal regulations regarding the retention of DOT markings, placards, and labels by reference.

The third part contains the newly amended Federal OSHA Hazard Communication Standard. This is not the same as the hazard communication standard adopted by section 14(a)(1) of the MIOSHA Act as amended.

The MDCIS also maintain additional information pertaining to the development of an effective hazard communication program in your workplace. For further assistance or questions regarding the Michigan Right To Know Law or the Michigan Hazard Communication Standard, call or write to either of the following divisions:

Michigan Department of Consumer and Industry Services
Bureau of Safety Regulation
Consultation Education and Training Division
P.O. Box 30643
Lansing, Michigan 48909-8143
(517) 322-1809

Michigan Department of Consumer and Industry Services
Bureau of Safety Regulation
Occupational Health Division
P.O. Box 30649
Lansing, Michigan 48909-8149
(517) 332-1608

ACT 154 AMENDMENTS

ACT NO. 80 OF THE PUBLIC ACTS OF 1986

EFFECTIVE APRIL 7, 1986

AN ACT to amend the title and sections 5, 11, 31, and 63 of Act No. 154 of the Public Acts of 1974, entitled "An act to prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety; to prescribe their powers and duties and powers and duties of the department of labor and department of public health; to impose an annual levy to provide revenue for the safety education and training division; to provide remedies and penalties; and to repeal certain acts and parts of acts," section 11 as amended by Act No. 51 of the Public Acts of 1980, being sections 408.1005, 408.1011, 408.1031, and 408.1063 of the Michigan Compiled Laws; and to add sections 14a, 14b, 14c, 14d, 14e, 14f, 14g, 14h, 14i, 14j, 14k, 14l, and 14m.

The People of the State of Michigan enact:

Section 1. The title and sections 5, 11, 31, and 63 of Act No. 154 of the Public Acts of 1974, section 11 as amended by Act No. 51 of the Public Acts of 1980, being sections 408.1005, 408.1011, 408.1031, and 408.1063 of the Michigan Compiled Laws, are amended and sections 14a, 14b, 14c, 14d, 14e, 14f, 14g, 14h, 14i, 14j, 14k, 14l, and 14m are added to read as follows:

TITLE

An act to prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety; to prescribe their powers and duties and powers and duties of the department of labor and department of public health; to prescribe certain powers and duties of the directors of the departments of labor, public health, and agriculture; to impose an annual levy to provide revenue for the safety education and training division; to provide remedies and penalties; and to repeal certain acts and parts of acts.

Sec. 5. (1) "Employee" means a person permitted to work by an employer.

(2) "Employer" means an individual or organization, including the state or a political subdivision, which employs 1 or more persons.

(3) "Imminent danger" means a condition or practice in a place of employment which is such that a danger exists which could reasonably be expected to cause death or serious physical harm either immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided. A container of an unknown and unlabeled chemical or a container of hazardous chemicals that is not labeled or for which a material safety data sheet is not available as required by the standard incorporated by reference in section 14a shall be considered an imminent danger after meeting the provisions of section 31.

(4) "Inspection" means the examination or survey of a place of employment to detect the presence of an existing or potential occupational safety or health hazard or to determine

compliance with this act, rules or standards promulgated, or orders issued pursuant to this act.

(5) "Investigation" means the detailed evaluation or study of working conditions, including equipment, processes, substances, air contaminants, or physical agents with respect to the actual or potential occurrence of occupational accidents, illnesses, or diseases.

Sec. 11. An employer shall:

(a) Furnish to each employee, employment and a place of employment which is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.

(b) Comply with this act and with the rules and standards promulgated and the orders issued pursuant to this act.

(c) Post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act, including applicable rules and standards.

(d) Provide personal protective equipment at the employer's expense when it is specifically required to be provided at the employer's expense in a rule or a standard promulgated by a standards promulgating commission. When promulgating a rule or a standard concerning personal protective equipment, the standards promulgating commission shall use at least the following criteria in determining who should pay for the equipment:

(i) Whether the equipment is transferable between employees.

(ii) Whether the equipment is maintained by the employer.

(iii) Whether the equipment generally remains at the work site after the work activity has been completed.

(iv) The amount of personal use involved with the equipment.

(v) Any other criteria deemed applicable by the standards promulgating commission.

Sec. 14a. (1) The occupational safety and health hazard communication standard that has been adopted or promulgated by the United States department of labor and has been codified at 29 C.F.R. 1910.1200 as of the effective date of the amendatory act that adds this section is incorporated by reference and shall have the same force and effect as a rule promulgated pursuant to this act. In addition to the standard incorporated by reference in this subsection, sections 14b to 14l shall apply to an employer subject to this act. The applicability of the standard incorporated by reference in this subsection and of sections 14b to 14l is subject to subsections (4), (5), (6), and (7).

(2) When a rule or standard that is continued pursuant to section 24(3) is in conflict with or covers the same or similar subject as a standard incorporated by reference pursuant to subsection (1), the federal standard so incorporated by reference shall govern, and the state rule or standard continued pursuant to section 24(3) is rescinded;

(3) The department of labor shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) relative to occupational safety. The department of public health shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) relative to occupational health. The departments of public

health and labor shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) in a manner that is consistent with the administration and enforcement of the standard by the federal occupational safety and health administration.

(4) Beginning November 25, 1985, employers who are chemical manufacturers in a standard industrial classification of 20 through 39 of the standard industrial classification code published by the federal department of management and budget, importers, and distributors shall label containers of hazardous chemicals leaving their workplaces, provide material safety data sheets with initial

shipments, and otherwise comply with any applicable provision of the standard incorporated by reference pursuant to subsection (1) and of sections 14b to 14l. A chemical manufacturer, importer, or distributor subject to this subsection shall provide a material safety data sheet and an appropriately labeled container to each employer in this state, regardless of the employer's standard industrial classification in the standard industrial classification code, who purchases a hazardous chemical.

(5) Beginning May 25, 1986, an employer in a standard industrial classification of 20 through 39 of the standard industrial classification code published by the federal department of management and budget shall comply with the requirements of the standard incorporated by reference pursuant to subsection (1) and with sections 14b to 14l with respect to the use of hazardous chemicals in the workplace.

(6) Beginning February 25, 1987, an employer who is subject to this act but who is not otherwise specifically described in subsections (4) and (5) shall comply with the requirements of the standard incorporated by reference pursuant to subsection (1) and with sections 14b to 14l with respect to the use of hazardous chemicals in the workplace. However, instead of complying with any conflicting provision of the standard incorporated by reference in subsection (1), an employer who is described in this subsection is required:

(a) To provide information and training only to employees who are exposed to hazardous chemicals in the normal course of employment or who are likely to be exposed to hazardous chemicals in the event of an emergency.

(b) In the case where a hazardous chemical is mixed or combined with any other chemical or hazardous chemical by the employer, to maintain and provide a material safety data sheet for each constituent hazardous chemical and to maintain a material identification system that identifies to employees the appropriate material safety data sheets.

(7) The standard incorporated by reference in subsection (1), this section, and sections 14b to 14l shall not be construed to require an employer in a standard industrial classification other than 20 through 39 of the standard industrial classification code published by the federal department of management and budget to evaluate chemicals, to develop labels for containers of hazardous chemicals, or to develop material safety data sheets.

Sec. 14b. In nonemergency situations, a chemical manufacturer, importer, or employer claiming a trade secret, upon request, shall disclose a specific chemical identity, otherwise permitted to be withheld under the standard incorporated by reference in section 14a, in addition to a health professional as specified in 29 C.F.R. 1910.1200(i)(3), to an occupational health nurse providing medical or other occupational health services to exposed employees, to an authorized employee representative of an exposed employee, and to an exposed employee, if the occupational health nurse, the representative, and the employee comply with the requirements described in 29 C.F.R. 1910.1200(i)(3) and (4).

Sec. 14c. Pipes or piping systems in a workplace that contain a hazardous chemical shall be identified to an employee by a label or by a sign, placard, written operating instructions, process sheet, batch ticket, or a substance identification system that conveys the same information required to be displayed on a label by the standard incorporated by reference in section 14a. The employer shall provide at least 1 label, sign, placard, set of written operating instructions, process sheet, batch ticket, or a substance identification system selected by the employer and readily accessible to each employee at a location in the workplace designated by the employer. The employer shall establish a pipe and stationary process container entry procedure that will assure that the information required by 29 C.F.R. 1910.1200(f) is conveyed to an employee before entry. The requirements of this subsection shall apply in addition to the occupational safety and health hazard communication standard incorporated by reference in section 14a.

Sec. 14d. (1) Upon request of the director of the department of public health, an employer who claims a trade secret under the standard incorporated by reference by section 14a shall support the trade secret claim. Subject to subsection (2), the director shall consider the following factors in determining whether a specific chemical identity may be withheld as a trade secret:

(a) The extent to which the information is known outside the employer's business.

(b) The extent to which it is known by employees and others involved in the employer's business.

(c) The extent of measures taken by the employer to guard the secrecy of the information.

(d) The value of the information to the employer and the employer's competitors.

(e) The amount of effort and money expended by the employer in developing the information.

(f) The ease or difficulty with which the information could be properly acquired or duplicated by others.

(2) The determination made by the director under subsection (1) shall not uphold as a trade secret any chemical identity information that is readily discoverable through reverse engineering.

(3) This section shall not be construed to require the prior approval of trade secret claims by the director of the department of public health or the director of the department of labor.

(4) An exposed employee, a health professional providing medical or other occupational health services to exposed employees, or an authorized employee representative of an exposed employee may petition the director of the department of public health to review a denial of a written request for disclosure of a specific chemical identity. This review shall be conducted as a contested case pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall be confidential. The director shall review the assertion of trade secrecy and make a determination in accordance with the principles provided in this section and the standard incorporated by reference in section 14a. In preparing the final order, the director shall consider and require any prudent measures necessary to protect the health of employees or the public in general while maintaining the confidentiality of any trade secrets.

(5) The director of public health may revoke any order entered under subsection (4) upholding a trade secret claim after a hearing involving the parties of interest upon showing that a party has not complied with an order issued pursuant to subsection (4).

(6) Records and information obtained by any department, commission, or public agency related to a review by the director of public health under subsection (4) and to information determined by the director to be a trade secret in that review shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(7) Notwithstanding that information has been claimed as a trade secret pursuant to 29 C.F.R. 1910.1200(i) or has been upheld by the director as a trade secret pursuant to this section, a chemical manufacturer, importer, or employer shall provide the specific chemical identity and percentage composition of a hazardous chemical to the director of public health when the director requests that information in the discharge of the director's duties under this act.

Sec. 14e. In order to educate employers, employees, and the public about the hazards of exposure to hazardous chemicals and the requirements of the occupational safety and health hazard communication standard incorporated by reference in section 14a and the requirements of sections 14b to 14l, the departments of public health and labor shall distribute periodically public service announcements to newspapers and television and radio stations throughout this state.

Sec. 14f (1) An employer engaged in agricultural operations is not required to comply with the standard incorporated by reference in section 14a or sections 14b to 14l for a hazardous chemical that is regulated under the insecticide, fungicide, and rodenticide act, 7 U.S.C. 136 to 136y, or the pesticide control act, Act No. 171 of the Public Acts of 1976, being sections 286.551 to 286.581 of the Michigan Compiled Laws, and any rules or regulations promulgated under those acts.

(2) The director of the department of agriculture at least annually shall certify to the department of public health a list of chemicals regulated by the acts described in subsection (1).

Sec. 14g. An employer is not required to comply with the standard incorporated by reference in section 14a or with sections 14b to 14l with respect to a chemical in a sealed package and in transit by a common carrier if the seal remains intact while in transit.

Sec. 14h. An employer engaged in construction operations may satisfy the requirements of the standard incorporated in section 14a and sections 14b to 14l that a material safety data sheet be maintained for each hazardous chemical in the workplace by maintaining material safety data sheets in 1 or more central locations at a job site.

Sec. 14i. The chief of each organized fire department shall prepare and disseminate to each fire fighting employee of the organized fire department a plan for executing the department's responsibilities with respect to each site within the organized fire department's jurisdiction where hazardous chemicals are used or produced.

Sec. 14j. An employer subject to the standard incorporated by reference in section 14a and to sections 14b to 14l shall post signs throughout the workplace advising employees of all of the following:

(a) The location of the material safety data sheets for the hazardous chemicals produced or used in the workplace and the name of the person from whom to obtain the sheets

(b) That the employer is prohibited from discharging or discriminating against an employee who exercises the rights regarding information about hazardous chemicals in the workplace afforded by the standard incorporated by reference in section 14a and by sections 14b to 14l.

(c) That, as an alternative to requesting the employer for a material safety data sheet for a hazardous chemical in the workplace, the employee may obtain a copy of the material safety data sheet from the department of public health. The sign shall include the address and telephone number of the division of the department of public health that has the responsibility of responding to such requests.

Sec. 14k. (1) An employer who is subject to the standard incorporated by reference in section 14a and to sections 14b to 14l shall organize the material safety data sheets for the hazardous chemicals in the workplace in a systematic and consistent manner and shall train employees in locating particular material safety data sheets.

(2) Not later than 5 working days after receipt of a new or a revised material safety data sheet, the employer shall post for a period of 10 working days a notice of the existence of the new or revised sheet and directions for locating the new or revised sheet according to the method used by the employer for organizing material safety data sheets.

Sec. 14l. The failure of an employer who is subject to the standard incorporated by reference in section 14a and to this section and sections 14b to 14k to provide an exposed employee with access to the most current material safety data sheet available to the employer shall not be considered by the department as a violation for which a de minimis notice of violation may be issued under section 33(5). The department may consider such a violation to be a serious violation or a violation not of a serious nature for which a citation may be issued under section 35.

Sec. 14m. The standard incorporated by reference in section 14a and sections 14b to 14l occupy the entire field of regulation of occupational safety and health with respect to hazardous chemicals in the workplace. Except as specifically provided in this act, any provision of any ordinance, law, rule, regulation, policy, or practice of a city, township, village, county, governmental authority created by statute, or other political subdivision of the state that imposes any requirement on an employer or expands the rights of an employee with respect to the communication of the hazards of hazardous chemicals in the workplace shall be considered in conflict with this act and shall not be enforceable.

Sec. 31. (1) When and as soon as a department representative determines that an imminent danger exists in a place of employment, the department representative shall inform the employer and the affected employees of a determination of the imminent danger. The department representative immediately shall recommend to the appropriate department director that an order be issued to require that steps be taken as may be necessary to avoid, correct, or remove the imminent danger. After receiving authorization for the issuance of an order from the appropriate department director, the department representative shall apply a tag to the equipment or process which is the source of the imminent danger identifying that an imminent danger exists. The tag shall be removed only by the department representative. At request of the employer, an area supervisor shall, within 24 hours after a request, make an on site review of any tagging and recommend continuance or removal. The order shall prohibit the employment or presence of an

individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger in a safe and orderly manner. In tagging the equipment or process which is the source of imminent danger and in issuing the order, consideration shall be given to any necessity to maintain the capacity of a continuous process operation and to the reestablishment of normal operations without a complete cessation of operations.

(2) An employer shall not permit an employee, other than an employee whose presence is necessary to avoid, correct, or remove the imminent danger, to operate equipment or engage in a process which has been tagged by the department and which is the subject of an order issued by the department identifying that an imminent danger exists. An employee who suffers a loss of wages or fringe benefits or is in any manner discriminated against for refusing to operate equipment or engage in a process which has been tagged by the department and which is the subject of an order issued by the department, as provided in this section, may file a discrimination complaint, and the department of labor may order appropriate relief as provided in section 65. This section does not prohibit an employer from assigning an employee to an operation not affected by the imminent danger situation, subject to any collective bargaining agreement.

(3) Upon failure of the employer to promptly comply with a department order, as described in subsection (1), the appropriate department shall petition the circuit court having jurisdiction to restrain a condition or practice in a place of employment which the department determines causes the imminent danger.

(4) If the department arbitrarily or capriciously fails to seek relief under this section, an employee who may be injured by reason of the failure, or the representative of those employees, may bring action against the department in the circuit court having jurisdiction for a writ of mandamus to compel the department to seek an order and for further relief, as may be appropriate.

(5) The department of public health or the department of labor shall respond within 24 hours after receipt of an imminent danger complaint concerning an unknown and

unlabeled container of chemicals or an imminent danger complaint concerning a container of hazardous chemicals that is not labeled or for which a material safety data sheet is not available as required by the standard incorporated by reference in section 14a and by sections 14b to 14l.

(6) Before a department representative seeks authorization to issue an order pursuant to the procedures prescribed in subsection (1), an employer shall be given a reasonable opportunity to identify, label, or provide the material safety data sheet for the container which is the subject of the imminent danger determination.

Sec. 63. (1) Information reported to or otherwise obtained by the department of labor or the department of public health, in connection with an inspection, investigation, or proceeding under this act that contains or that might reveal a trade secret, including information required to be made available under sections 14a through 14l and section 24(9) and (10), shall be considered confidential. In a proceeding under this act, the department of public health shall promulgate rules for the purpose of protecting trade secrets regarding information required to be made available under sections 14a through 14l and section 24(9) and (10), and the appropriate department, the board, or the court shall issue orders as may be appropriate to protect the confidentiality of trade secrets and to carry out the objectives of this act .

(2) Except as otherwise provided by this subsection and subsection (1), information reported to or otherwise obtained by a department from an employee in connection with an inspection, investigation, or proceeding under this act shall be made available to the public pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The identity of an employee or any information that may lead to the identification of an employee who provides information pertaining to a possible violation or violations of this act shall be exempt from disclosure.

Section 2. Section 11 shall take effect May 25, 1986

This act is ordered to take immediate effect.

DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

DIRECTOR'S OFFICE

CONSTRUCTION SAFETY STANDARDS

Filed with the Secretary of State on **June 2, 1995, as amended.**

These rules take effect 15 days after filing with the Secretary of State

(By authority conferred on the director of the department of consumer and industry services by sections 19 and 21 of Act No. 154 of the Public Acts of 1974, as amended, and Executive Order No. 1996-2, being §§408.1019, 408.1021 and 445.2001 of the Michigan Compiled Laws)

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PART 42. HAZARD COMMUNICATION

R 408.44201 Scope and application.

Rule 4201. (1) These rules establish requirements to ensure that the hazards of all chemicals produced or imported by chemical manufacturers or importers are evaluated and that information concerning the hazards is transmitted to affected employers and communicated to employees. These rules establish requirements to ensure that markings, placards, and labels required on hazardous materials and explosives, both in transportation and at stationary facilities, are retained until the materials have been

removed to the extent they no longer pose a hazard.

(2) The regulations adopted by R 408.44202 shall apply to all chemical manufacturers, chemical importers, and employers pursuant to the provisions of 29 C.F.R. §1926.59.

(3) The regulations adopted by R 408.44202 shall apply to workplaces pursuant to the provisions of 29 C.F.R. §1926.60 and §1926.61.

(4) Section 14a(1) of Act No. 154 of the Public Acts of 1974, as amended, being R 408.1014(a)(1) of the Michigan Compiled Laws, adopted the original federal standard by reference. In addition, sections 14b to 14l of Act No. 154 of the Public Acts of 1974, as amended, being §408.1014b to 408.1014l of the Michigan Compiled Laws, set forth additional requirements for Michigan employers. The regulations adopted by R 408.44202 will have the force and effect of law, but only to the extent they are consistent with section 14a(1) of Act No. 154 of the Public Acts of 1974, as amended. If there is any inconsistency, section 14a(1) of Act No. 154 of the Public Acts of 1974, as amended, will control.

R 408.44202 Hazard communication; adoption by reference; availability.

Rule 4202. (1) The federal occupational safety and health administration's regulations on hazard communication that have been promulgated by the United States department of labor and codified at 29 C.F.R. §1910.1200, revised as of February 9, 1994, are adopted by reference in these rules as of the effective date of these rules.

(2) The adopted federal regulations shall have the same force and effect as a rule promulgated under Act No. 154 of the Public Acts of 1974, as amended, being §408.1001 et seq. of the Michigan Compiled Laws.

(3) The adopted federal regulations are available without cost as of the time of adoption of these rules from the United States Department of Labor, Occupational Safety and Health Administration, 801 South Waverly Road, Room 306, Lansing, Michigan 48917, or from the Michigan Department of Consumer and Industry Services, Safety Standards Division, 7150 Harris Drive, P.O. Box. 30643, Lansing, Michigan 48909-8143.

R 408.44203 Retention of department of transportation markings, placards, and labels; adoption by reference; availability.

Rule 4203. (1) The federal occupational safety and health administration's regulations on retention of department of transportation markings, placards, and labels which have been promulgated by the United States department of labor and codified at 29 C.F.R. §1926.61 and §1928.21 and which were published in the Federal Register on July 19, 1994, are adopted by reference in these rules as of the effective date of these rules.

(2) The adopted federal regulations shall have the force and effect as a rule promulgated under Act No. 154 of the Public Acts of 1974, as amended, being 408.1001 et seq. of the Michigan Compiled Laws.

(3) The adopted federal regulations are available without cost as of the time of adoption of these rules from the United States Department of Labor, Occupational Safety and Health Administration, 801 South Waverly Road, Room 306, Lansing, Michigan 48917, or from the Michigan Department of Consumer and Industry Services, Safety Standards Division, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan 48909-8143.

DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

DIRECTOR'S OFFICE

GENERAL INDUSTRY SAFETY STANDARDS

Filed with the Secretary of State on **June 2, 1995, as amended.**

These rules take effect 15 days after filing with the Secretary of State

(By authority conferred on the director of the department of consumer and industry services by sections 16 and 21 of Act No. 154 of the Public Acts of 1974, as amended, and Executive Reorganization Order No. 1996-2, being §§408.1016, 408.1021, and 445.2001 of the Michigan Compiled Laws)

Visit our website at: www.michigan.gov/mioshastandards

PART 92. HAZARD COMMUNICATION

R 408.19201 Scope and application.

Rule 9201. (1) These rules establish requirements to ensure that the hazards of all chemicals produced or imported by chemical manufacturers or importers are evaluated and that information concerning the hazards is transmitted to affected employers and communicated to employees. These rules establish requirements to ensure that markings, placards, and labels required on hazardous materials and explosives, both in transportation and at stationary facilities, are retained until the materials have been removed to the extent they no longer pose a hazard.

(2) The regulations adopted by R 408.19202 shall apply to all chemical manufacturers, chemical importers, and employers pursuant to the provisions of 29 C.F.R. §1910.1200.

(3) The regulations adopted by R 408.19202 shall apply to workplaces pursuant to the provisions of 29 C. F. R. §1910.1200 and 1928.21.

(4) Section 14a(1) of Act No. 154 of the Public Acts of 1974, as amended, being §408.1014a(1) of the Michigan Compiled Laws, adopted the original federal standards by reference. In addition, sections 14b to 14l of Act No. 154 of the Public Acts of 1974, as amended being §§408.1014b to 408.1014l of the Michigan Compiled Laws, set forth additional requirements for Michigan employers. The regulations adopted by R 408.19202 will have the force and effect of law, but only to the extent they are consistent with section 14a(1) of Act No. 154 of the Public Acts of 1974, as amended. If there is any inconsistency, section 14a(1) of Act No. 154 of the Public Acts of 1974, as amended, will control.

R 408.19202 Hazard communication; adoption by reference; availability.

Rule 9202. (1) The federal occupational safety and health administration's regulations on hazard communication that have been promulgated by the United States department of labor and codified at 29 C.F.R. §1910.1200, revised as of

February 9, 1994, are adopted by reference in these rules as of the effective date of these rules.

(2) The adopted federal regulations shall have the same force and effect as a rule promulgated under Act No. 154 of the Public Acts of 1974, as amended, being §408.1001 et seq. of the Michigan Compiled Laws.

(3) The adopted federal regulations are available without cost as of the time of adoption of these rules from the United States Department of Labor, Occupational Safety and Health Administration, 801 South Waverly Road, Room 306, Lansing, Michigan 48917, or from the Michigan Department of Consumer and Industry Services, Safety Standards Division, 7150 Harris Drive, P.O. Box, 30643, Lansing, Michigan 48909-8143.

R 408.19203 Retention of department of transportation markings, placards, and labels; adoption by reference; availability.

Rule 9203. (1) The federal occupational safety and health administration's regulations on retention of department of transportation markings, placards, and labels that have been promulgated by the United States department of labor and codified 29 C.F.R. §§1910.1201 and 1928.21 and which were published in the Federal Register on July 19, 1994, are adopted by reference in these rules as of the effective date of these rules.

(2) The adopted federal regulations shall have the same force and effect as a rule promulgated under Act No. 154 of the Public Acts of 1974, as amended, being §408.1001 et seq. of the Michigan Compiled Laws.

(3) The adopted federal regulations are available without cost as of the time of adoption of these rules from the United States Department of Labor, Occupational Safety and Health Administration, 801 South Waverly Road, Room 306, Lansing, Michigan 48917, or from the Michigan Department of Consumer and Industry Services, Safety Standards Division, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan 48909-8143.

DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

DIRECTOR'S OFFICE

OCCUPATIONAL HEALTH STANDARDS

Filed with the Secretary of State on **June 2, 1995, as amended.**

These rules take effect 15 days after filing with the Secretary of State

(By authority conferred on the director of the department of consumer and industry services by section 24 of Act No. 154 of the Public Acts of 1974, as amended, and Executive Reorganization Orders Nos. 1996-1 and 1996-2, being §§408.1024, 330.3101, and 445.2001 of the Michigan Compiled Laws)

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PART 430. HAZARD COMMUNICATION

R 325.77001 Scope and application.

Rule 1. (1) These rules establish requirements to ensure that the hazards of all chemicals produced or imported by chemical manufacturers or importers are evaluated and that information concerning the hazards is transmitted to affected employers and communicated to employees. These rules establish requirements to ensure that markings, placards, and labels required on hazardous materials and explosives, both in transportation and at stationary facilities, are retained until the materials have been removed to the extent that the materials do not pose a hazard.

(2) The regulations adopted by R 325.77002 shall apply to all chemical manufacturers, chemical importers, and employers pursuant to the provisions of 29 C.F.R. §1910.1200 and 29 C.F.R. §1926.59.

(3) The regulations adopted by R 325.77003 shall apply to workplaces pursuant to the provisions of 29 C.F.R. §1910.1201, 29 C.F.R. §1926.61, and 29 C.F.R. §1928.21.

(4) Section 14a(1) of Act No. 154 of the Public Acts of 1974, as amended, being §408.1014a(1) of the Michigan Compiled Laws, adopted the original federal standard by reference. In addition, sections 14b to 14l of Act No. 154 of the Public Acts of 1974, as amended, being §§408.1014b to 408.1014l of the Michigan Compiled Laws, set forth additional requirements for Michigan employers. The regulations adopted by R 325.77002 will have the force and effect of law, but only to the extent they do not conflict with section 14a(1) of Act No. 154 of the Public Acts of 1974, as amended, being §408.1014a(1) of the Michigan Compiled Laws. If there is any conflict, the provisions of Act No. 154 of the Public Acts of 1974, as amended, will control.

R 325.77002 Hazard communication; adoption by reference; availability.

Rule 2. (1) The federal occupational safety and health administration's regulations on hazard communication that have been promulgated by the United States department of labor and codified at 29 C.F.R. §1910.1200 and 29 C.F.R. §1926.59, February 9, 1994, and amendments appearing in

the Federal Register, pp. 65947 to 65948, December 22, 1994, are adopted by reference in these rules as of the effective date of these rules.

(2) The adopted federal regulations shall have the same force and effect as a rule promulgated under Act No. 154 of the Public Acts of 1974, as amended, being §408.1001 et seq. of the Michigan Compiled Laws.

(3) The adopted federal regulations are available without cost as of the time of adoption of these rules from the United States Department of Labor, OSHA, 801 South Waverly, Room 306, Lansing, Michigan 48917, or from the Michigan Department of Consumer and Industry Services, Division of Occupational Health, Post Office Box 30649, Lansing, Michigan 48909-8149.

R 325.77003 Retention of department of transportation markings, placards, and labels; adoption by reference; availability.

Rule 3. (1) The federal occupational safety and health administration's regulations on retention of United States department of transportation markings, placards, and labels which have been promulgated by the United States department of labor and codified 29 C.F.R. §1910.1201, 29 C.F.R. §1926.61, and 29 C.F.R. §1928.21 and which were published in the Federal Register on July 19, 1994, are adopted by reference in these rules as of the effective date of these rules.

(2) The adopted federal regulations shall have the same force and effect as a rule promulgated under Act No. 154 of the Public Acts of 1974, as amended, being §408.1001 et seq. of the Michigan Compiled Laws.

(3) The adopted federal regulations are available without cost as of the time of adoption of these rules from the United States Department of Labor, OSHA, 801 South Waverly Road, Room 306, Lansing, Michigan 48917, or from the Michigan Department of Consumer and Industry Services, Division of Occupational Health, Post Office Box 30649, Lansing, Michigan 48909-8149.

OCCUPATIONAL SAFETY AND HEALTH STANDARD

§1910.1200 HAZARD COMMUNICATION

(a) "Purpose." (1) The purpose of this section is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employers and employees. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training.

(2) This occupational safety and health standard is intended to address comprehensively the issue of evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, and to preempt any legal requirements of a state, or political subdivision of a state, pertaining to this subject. Evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, may include, for example, but is not limited to, provisions for: developing and maintaining a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals in the workplace, as well as of containers of chemicals being shipped to other workplaces; preparation and distribution of material safety data sheets to employees and downstream employers; and development and implementation of employee training programs regarding hazards of chemicals and protective measures. Under section 18 of the Act, no state or political subdivision of a state may adopt or enforce, through any court or agency, any requirement relating to the issue addressed by this Federal standard, except pursuant to a Federally-approved state plan.

(b) "Scope and application." (1) This section requires chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers. (Employers who do not produce or import chemicals need only focus on those parts of this rule that deal with establishing a workplace program and communicating information to their workers. Appendix E of this section is a general guide for such employers to help them determine their compliance obligations under the rule.)

(2) This section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

(3) This section applies to laboratories only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

(ii) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible during each workshift to laboratory employees when they are in their work areas;

(iii) Employers shall ensure that laboratory employees are provided information and training in accordance with

paragraph (h) of this section, except for the location and availability of the written hazard communication program under paragraph (h)(2)(iii) of this section; and,

(iv) Laboratory employers that ship hazardous chemicals are considered to be either a chemical manufacturer or a distributor under this rule, and thus must ensure that any containers of hazardous chemicals leaving the laboratory are labeled in accordance with paragraph (f)(1) of this section, and that a material safety data sheet is provided to distributors and other employers in accordance with paragraphs (g)(6) and (g)(7) of this section.

(4) In work operations where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales), this section applies to these operations only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

(ii) Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals, shall obtain a material safety data sheet as soon as possible for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and,

(iii) Employers shall ensure that employees are provided with information and training in accordance with paragraph (h) of this section (except for the location and availability of the written hazard communication program under paragraph (h)(2)(iii) of this section), to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container.

(5) This section does not require labeling of the following chemicals:

(i) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(ii) Any chemical substance or mixture as such terms are defined in the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(iii) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device or product, including materials intended for use as ingredients in such products (e.g. flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151 et seq.), and regulations issued under those Acts, when they are subject to the labeling requirements under those Acts by either the Food and Drug Administration or the Department of Agriculture;

(iv) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling

regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms;

(v) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission; and,

(vi) Agricultural or vegetable seed treated with pesticides and labeled in accordance with the Federal Seed Act (7 U.S.C. 1551 et seq.) and the labeling regulations issued under that Act by the Department of Agriculture.

(6) This section does not apply to:

(i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.) when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with the Environmental Protection Agency regulations.

(iii) Tobacco or tobacco products;

(iv) Wood or wood products, including lumber which will not be processed, where the chemical manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility (wood or wood products which have been treated with a hazardous chemical covered by this standard, and wood which may be subsequently sawed or cut, generating dust, are not exempted);

(v) Articles (as that term is defined in paragraph (c) of this section);

(vi) Food or alcoholic beverages which are sold, used, or prepared in a retail establishment (such as a grocery store, restaurant, or drinking place), and foods intended for personal consumption by employees while in the workplace;

(vii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), when it is in solid, final form for direct administration to the patient (e.g., tablets or pills); drugs which are packaged by the chemical manufacturer for sale to consumers in a retail establishment (e.g., over-the-counter drugs); and drugs intended for personal consumption by employees while in the workplace (e.g., first aid supplies);

(viii) Cosmetics which are packaged for sale to consumers in a retail establishment, and cosmetics intended for personal consumption by employees while in the workplace;

(ix) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, where the employer can show that it is used in the workplace for the purpose intended by the chemical manufacturer or importer of the product, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers when used for the purpose intended;

(x) Nuisance particulates where the chemical manufacturer or importer can establish that they do not pose any physical or health hazard covered under this section;

(xi) Ionizing and nonionizing radiation; and,

(xii) Biological hazards.

(c) "Definitions."

"Article" means a manufactured item other than a fluid or particle: (i) which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts of a hazardous chemical (as determined under paragraph (d) of this section), and does not pose a physical hazard or health risk to employees.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Chemical" means any element, chemical compound or mixture of elements and/or compounds.

"Chemical manufacturer" means an employer with a workplace where chemical(s) are produced for use or distribution.

"Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

"Combustible liquid" means any liquid having a flashpoint at or above 100 deg. F (37.8 deg. C), but below 200 deg. F (93.3 deg. C), except any mixture having components with flashpoints of 200 deg. F (93.3 deg. C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

"Commercial account" means an arrangement whereby a retail distributor sells hazardous chemicals to an employer, generally in large quantities over time and/or at costs that are below the regular retail price.

"Common name" means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

"Compressed gas" means:

(i) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 deg. F (21.1 deg. C); or

(ii) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130 deg. F (54.4 deg. C) regardless of the pressure at 70 deg. F (21.1 deg. C); or

(iii) A liquid having a vapor pressure exceeding 40 psi at 100 deg. F (37.8 deg. C) as determined by ASTM D-323-72.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

"Designated representative" means any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

"Employee" means a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or

bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered.

“Employer” means a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor.

“Explosive” means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

“Exposure or exposed” means that an employee is subjected in the course of employment to a chemical that is a physical or health hazard, and includes potential (e.g. accidental or possible) exposure. “Subjected” in terms of health hazards includes any route of entry (e.g. inhalation, ingestion, skin contact or absorption.)

“Flammable” means a chemical that falls into one of the following categories:

(i) “Aerosol, flammable” means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(ii) “Gas, flammable” means: (A) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or

(B) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;

(iii) “Liquid, flammable” means any liquid having a flashpoint below 100 deg. F (37.8 deg. C), except any mixture having components with flashpoints of 100 deg. F (37.8 deg. C) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

(iv) “Solid, flammable” means a solid, other than a blasting agent or explosive as defined in 1910.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

“Flashpoint” means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed Tester (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100 deg. F (37.8 deg. C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

(ii) Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100 deg. F (37.8 deg. C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78)).

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

“Foreseeable emergency” means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.

“Hazardous chemical” means any chemical which is a physical hazard or a health hazard.

“Hazard warning” means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s). (See the definitions for “physical hazard” and “health hazard” to determine the hazards which must be covered.)

“Health hazard” means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term “health hazard” includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A provides further definitions and explanations of the scope of health hazards covered by this section, and Appendix B describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this standard.

“Identity” means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit crossreferences to be made among the required list of hazardous chemicals, the label and the MSDS.

“Immediate use” means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

“Importer” means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States.

“Label” means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

“Material safety data sheet (MSDS)” means written or printed material concerning a hazardous chemical which is prepared in accordance with paragraph (g) of this section.

“Mixture” means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

“Organic peroxide” means an organic compound that contains the bivalent -O-O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

“Oxidizer” means a chemical other than a blasting agent or explosive as defined in 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

“Physical hazard” means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or waterreactive.

“Produce” means to manufacture, process, formulate, blend, extract, generate, emit, or repackage.

“Pyrophoric” means a chemical that will ignite spontaneously in air at a temperature of 130 deg. F (54.4 deg. C) or below.

“Responsible party” means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

“Specific chemical identity” means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

“Trade secret” means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D sets out the criteria to be used in evaluating trade secrets.

“Unstable (reactive)” means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become selfreactive under conditions of shocks, pressure or temperature.

“Use” means to package, handle, react, emit, extract, generate as a byproduct, or transfer.

“Water-reactive” means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

“Work area” means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

“Workplace” means an establishment, job site, or project, at one geographical location containing one or more work areas.

(d) “Hazard determination.” (1) Chemical manufacturers and importers shall evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical to satisfy this requirement.

(2) Chemical manufacturers, importers or employers evaluating chemicals shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section. Appendix A shall be consulted for the scope of health hazards covered, and Appendix B shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

(3) The chemical manufacturer, importer or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous:

(i) 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA); or,

(ii) “Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment,” American Conference of Governmental Industrial Hygienists (ACGIH) (latest edition). The chemical manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the chemicals in these source lists in accordance with the requirements of this standard.

(4) Chemical manufacturers, importers and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

(i) National Toxicology Program (NTP), “Annual Report on Carcinogens” (latest edition);

(ii) International Agency for Research on Cancer (IARC) “Monographs” (latest editions); or

(iii) 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

Note: The “Registry of Toxic Effects of Chemical Substances” published by the National Institute for Occupational Safety and Health indicates whether a chemical has been found by NTP or IARC to be a potential carcinogen.

(5) The chemical manufacturer, importer or employer shall determine the hazards of mixtures of chemicals as follows:

(i) If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous;

(ii) If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under paragraph (d)(4) of this section;

(iii) If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and,

(iv) If the chemical manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health risk to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(6) Chemical manufacturers, importers, or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazards of the chemical they evaluate. The written procedures are to be made available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director. The written description may be incorporated into the written hazard communication program required under paragraph (e) of this section.

(e) “Written hazard communication program.” (1) Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

(i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and,

(ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas.

(2) “Multi-employer workplaces.” Employers who produce, use, or store hazardous chemicals at a workplace in such a way that the employees of other employer(s) may be exposed (for example, employees of a construction contractor working

on-site) shall additionally ensure that the hazard communication programs developed and implemented under this paragraph (e) include the following:

(i) The methods the employer will use to provide the other employer(s) on-site access to material safety data sheets for each hazardous chemical the other employer(s)' employees may be exposed to while working;

(ii) The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and,

(iii) The methods the employer will use to inform the other employer(s) of the labeling system used in the workplace.

(3) The employer may rely on an existing hazard communication program to comply with these requirements, provided that it meets the criteria established in this paragraph (e).

(4) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director, in accordance with the requirements of 29 CFR 1910.1020 (e).

(5) Where employees must travel between workplaces during a workshift, i.e., their work is carried out at more than one geographical location, the written hazard communication program may be kept at the primary workplace facility.

(f) "Labels and other forms of warning." (1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s);

(ii) Appropriate hazard warnings; and

(iii) Name and address of the chemical manufacturer, importer, or other responsible party.

(2)(i) For solid metal (such as a steel beam or a metal casting), solid wood, or plastic items that are not exempted as articles due to their downstream use, or shipments of whole grain, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes;

(ii) The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment; and,

(iii) This exception to requiring labels on every container of hazardous chemicals is only for the solid material itself, and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the material and to which employees handling the items in transit may be exposed (for example, cutting fluids or pesticides in grains).

(3) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) and regulations issued under that Act by the Department of Transportation.

(4) If the hazardous chemical is regulated by OSHA in a substance-specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

(5) Except as provided in paragraphs (f)(6) and (f)(7) of this section, the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s) contained therein; and,

(ii) Appropriate hazard warnings, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical.

(6) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by paragraph (f)(5) of this section to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.

(7) The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer. For purposes of this section, drugs which are dispensed by a pharmacy to a health care provider for direct administration to a patient are exempted from labeling.

(8) The employer shall not remove or deface existing labels on incoming containers of hazardous chemicals, unless the container is immediately marked with the required information.

(9) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

(10) The chemical manufacturer, importer, distributor or employer need not affix new labels to comply with this section if existing labels already convey the required information.

(11) Chemical manufacturers, importers, distributors, or employers who become newly aware of any significant information regarding the hazards of a chemical shall revise the labels for the chemical within three months of becoming aware of the new information. Labels on containers of hazardous chemicals shipped after that time shall contain the new information. If the chemical is not currently produced or imported, the chemical manufacturer, importers, distributor, or employer shall add the information to the label before the chemical is shipped or introduced into the workplace again.

(g) "Material safety data sheets." (1) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet in the workplace for each hazardous chemical which they use.

(2) Each material safety data sheet shall be in English (although the employer may maintain copies in other languages as well), and shall contain at least the following information:

(i) The identity used on the label, and, except as provided for in paragraph (i) of this section on trade secrets:

(A) If the hazardous chemical is a single substance, its chemical and common name(s);

(B) If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these

known hazards, and the common name(s) of the mixture itself; or,

(C) If the hazardous chemical is a mixture which has not been tested as a whole:

(1) The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise 1% or greater of the composition, except that chemicals identified as carcinogens under paragraph (d) of this section shall be listed if the concentrations are 0.1% or greater; and,

(2) The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise less than 1% (0.1% for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health risk to employees; and,

(3) The chemical and common name(s) of all ingredients which have been determined to present a physical hazard when present in the mixture;

(i) Physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

(ii) The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity;

(iii) The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;

(iv) The primary route(s) of entry;

(v) The OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available;

(vi) Whether the hazardous chemical is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest editions), or by OSHA;

(vii) Any generally applicable precautions for safe handling and use which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks;

(viii) Any generally applicable control measures which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

(ix) Emergency and first aid procedures;

(x) The date of preparation of the material safety data sheet or the last change to it; and,

(xi) The name, address and telephone number of the chemical manufacturer, importer, employer or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

(3) If no relevant information is found for any given category on the material safety data sheet, the chemical manufacturer, importer or employer preparing the material safety data sheet shall mark it to indicate that no applicable information was found.

(4) Where complex mixtures have similar hazards and contents (i.e. the chemical ingredients are essentially the

same, but the specific composition varies from mixture to mixture), the chemical manufacturer, importer or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

(5) The chemical manufacturer, importer or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the chemical manufacturer, importer or employer preparing the material safety data sheet becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the chemical is not currently being produced or imported the chemical manufacturer or importer shall add the information to the material safety data sheet before the chemical is introduced into the workplace again.

(6)(i) Chemical manufacturers or importers shall ensure that distributors and employers are provided an appropriate material safety data sheet with their initial shipment, and with the first shipment after a material safety data sheet is updated;

(ii) The chemical manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the distributor or employer prior to or at the time of the shipment;

(iii) If the material safety data sheet is not provided with a shipment that has been labeled as a hazardous chemical, the distributor or employer shall obtain one from the chemical manufacturer or importer as soon as possible; and,

(iv) The chemical manufacturer or importer shall also provide distributors or employers with a material safety data sheet upon request.

(7)(i) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers with their initial shipment and with the first shipment after a material safety data sheet is updated;

(ii) The distributor shall either provide material safety data sheets with the shipped containers, or send them to the other distributor or employer prior to or at the time of the shipment;

(iii) Retail distributors selling hazardous chemicals to employers having a commercial account shall provide a material safety data sheet to such employers upon request, and shall post a sign or otherwise inform them that a material safety data sheet is available;

(iv) Wholesale distributors selling hazardous chemicals to employers over-the-counter may also provide material safety data sheets upon the request of the employer at the time of the over-the-counter purchase, and shall post a sign or otherwise inform such employers that a material safety data sheet is available;

(v) If an employer without a commercial account purchases a hazardous chemical from a retail distributor not required to have material safety data sheets on file (i.e., the retail distributor does not have commercial accounts and does not use the materials), the retail distributor shall provide the employer, upon request, with the name, address, and telephone number of the chemical manufacturer, importer, or distributor from which a material safety data sheet can be obtained;

(vi) Wholesale distributors shall also provide material safety data sheets to employers or other distributors upon request; and,

(vii) Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail distributors that have informed them that the retail distributor does not sell the product to commercial accounts or open the sealed container to use it in their own workplaces.

(8) The employer shall maintain in the workplace copies of the required material safety data sheets for each hazardous chemical, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s). (Electronic access, microfiche, and other alternatives to maintaining paper copies of the material safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options.)

(9) Where employees must travel between workplaces during a workshift, i.e., their work is carried out at more than one geographical location, the material safety data sheets may be kept at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

(10) Material safety data sheets may be kept in any form, including operating procedures, and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous chemicals. However, the employer shall ensure that in all cases the required information is provided for each hazardous chemical, and is readily accessible during each work shift to employees when they are in their work area(s).

(11) Material safety data sheets shall also be made readily available, upon request, to designated representatives and to the Assistant Secretary, in accordance with the requirements of 29 CFR 1910.1020(e). The Director shall also be given access to material safety data sheets in the same manner.

(h) "Employee information and training." (1) Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and material safety data sheets.

(2) "Information." Employees shall be informed of:

- (i) The requirements of this section;
- (ii) Any operations in their work area where hazardous chemicals are present; and,
- (iii) The location and availability of the written hazard communication program, including the required list(s) of hazardous chemicals, and material safety data sheets required by this section.

(3) "Training." Employee training shall include at least:

- (i) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
- (ii) The physical and health hazards of the chemicals in the work area;
- (iii) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and,
- (iv) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

(i) "Trade secrets." (1) The chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:

(i) The claim that the information withheld is a trade secret can be supported;

(ii) Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;

(iii) The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and,

(iv) The specific chemical identity is made available to health professionals, employees, and designated representatives in accordance with the applicable provisions of this paragraph.

(2) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (i)(3) and (4) of this section, as soon as circumstances permit.

(3) In non-emergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (i)(1) of this section, to a health professional (i.e. physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

- (i) The request is in writing;
- (ii) The request describes with reasonable detail one or more of the following occupational health needs for the information:
 - (A) To assess the hazards of the chemicals to which employees will be exposed;
 - (B) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;
 - (C) To conduct pre-assignment or periodic medical surveillance of exposed employees;
 - (D) To provide medical treatment to exposed employees;
 - (E) To select or assess appropriate personal protective equipment for exposed employees;
 - (F) To design or assess engineering controls or other protective measures for exposed employees; and,
 - (G) To conduct studies to determine the health effects of exposure.

(iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in paragraph (i)(3)(ii) of this section:

- (A) The properties and effects of the chemical;
- (B) Measures for controlling workers' exposure to the chemical;
- (C) Methods of monitoring and analyzing worker exposure to the chemical; and,

(D) Methods of diagnosing and treating harmful exposures to the chemical;

(iv) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

(v) The health professional, and the employer or contractor of the services of the health professional (i.e. downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (i)(6) of this section, except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

(4) The confidentiality agreement authorized by paragraph (i)(3)(iv) of this section:

(i) May restrict the use of the information to the health purposes indicated in the written statement of need;

(ii) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

(iii) May not include requirements for the posting of a penalty bond.

(5) Nothing in this standard is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, such disclosure.

(7) If the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

(i) Be provided to the health professional, employee, or designated representative, within thirty days of the request;

(ii) Be in writing;

(iii) Include evidence to support the claim that the specific chemical identity is a trade secret;

(iv) State the specific reasons why the request is being denied; and,

(v) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(8) The health professional, employee, or designated representative whose request for information is denied under paragraph (i)(3) of this section may refer the request and the written denial of the request to OSHA for consideration.

(9) When a health professional, employee, or designated representative refers the denial to OSHA under paragraph (i)(8) of this section, OSHA shall consider the evidence to determine if:

(i) The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

(ii) The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and,

(iii) The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.

(10)(i) If OSHA determines that the specific chemical identity requested under paragraph (i)(3) of this section is not

a "bona fide" trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by OSHA.

(ii) If a chemical manufacturer, importer, or employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

(11) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the Occupational Safety and Health Review Commission in accordance with the Act's enforcement scheme and the applicable Commission rules of procedure. In accordance with the Commission rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the Administrative Law Judge may review the citation and supporting documentation "in camera" or issue appropriate orders to protect the confidentiality of such matters.

(12) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(13) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

(j) "Effective dates." Chemical manufacturers, importers, distributors, and employers shall be in compliance with all provisions of this section by March 11, 1994.

Note: The effective date of the clarification that the exemption of wood and wood products from the Hazard Communication standard in paragraph (b)(6)(iv) only applies to wood and wood products including lumber which will not be processed, where the manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility, and that the exemption does not apply to wood or wood products which have been treated with a hazardous chemical covered by this standard, and wood which may be subsequently sawed or cut generating dust has been stayed from March 11, 1994 to August 11, 1994.

[59 FR 17479, April 13, 1994; 59 FR 65947, Dec. 22, 1994; 61 FR 5507, Feb. 13, 1996]

§1910.1201 Retention of DOT Markings, Placards, and Labels.

(a) Any employer who receives a package of hazardous material which is required to be marked, labeled or placarded in accordance with the U. S. Department of Transportation's

Hazardous Materials Regulations (49 CFR Parts 171 through 180) shall retain those markings, labels and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

(b) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle or transport vehicle until the hazardous materials which require the marking or placarding are sufficiently removed to prevent any potential hazards.

(c) Markings, placards and labels shall be maintained in a manner that ensures that they are readily visible.

(d) For non-bulk packages which will not be reshipped, the provisions of this section are met if a label or other acceptable marking is affixed in accordance with the Hazard Communication Standard (29 CFR 1910.1200).

(e) For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as in the Hazardous Materials Regulations (49 CFR Parts 171 through 180).

[59 FR 36695, July 19, 1994]

§1926.61 Retention of DOT Markings, Placards, and Labels.

Note: The requirements applicable to construction work under this section are identical to those set forth at 1910.1201 of this chapter.

[59 FR 36695, July 19, 1994; 61 FR 31427, June 20, 1996]

§1928.21 Applicability of Standards in 29 CFR Part 1910.

(a) The following standards in part 1910 of this Chapter shall apply to agricultural operations:

- (1) Temporary labor camps - 1910.142;
- (2) Storage and handling of anhydrous ammonia - 1910.111(a) and (b);
- (3) Logging Operations - 1910.266;
- (4) Slow-moving vehicles - 1910.145.
- (5) Hazard communication - 1910.1200.
- (6) Cadmium - 1910.1027.
- (7) Retention of DOT markings, placards and labels - 1910.1201.

(b) Except to the extent specified in paragraph (a) of this section, the standards contained in Subparts B through T and Subpart Z of part 1910 of this title do not apply to agricultural operations.

(Section 1928.21 contains a collection of information which has been approved by the Office of Management and Budget under OMB Control No. 1218-0072)

[40 FR 18257, Apr. 25, 1975, as amended at 42 FR 38569, July 29, 1977; 52 FR 31886, Aug. 24, 1987; 59 FR 6184, Feb. 9, 1994; 59 FR 36700, July 19, 1994; 59 FR 51748, Oct. 12, 1994; 61 FR 5510, Feb. 13, 1996; 61 FR 9255, March 7, 1996]

Appendix A to §1910.1200--Health Hazard Definitions (Mandatory)

Although safety hazards related to the physical characteristics of a chemical can be objectively defined in terms of testing requirements (e.g. flammability), health hazard definitions are less precise and more subjective. Health hazards may cause measurable changes in the body - such as

decreased pulmonary function. These changes are generally indicated by the occurrence of signs and symptoms in the exposed employees - such as shortness of breath, a non-measurable, subjective feeling. Employees exposed to such hazards must be apprised of both the change in body function and the signs and symptoms that may occur to signal that change.

The determination of occupational health hazards is complicated by the fact that many of the effects or signs and symptoms occur commonly in non-occupationally exposed populations, so that effects of exposure are difficult to separate from normally occurring illnesses. Occasionally, a substance causes an effect that is rarely seen in the population at large, such as angiosarcomas caused by vinyl chloride exposure, thus making it easier to ascertain that the occupational exposure was the primary causative factor. More often, however, the effects are common, such as lung cancer. The situation is further complicated by the fact that most chemicals have not been adequately tested to determine their health hazard potential, and data do not exist to substantiate these effects.

There have been many attempts to categorize effects and to define them in various ways. Generally, the terms "acute" and "chronic" are used to delineate between effects on the basis of severity or duration. "Acute" effects usually occur rapidly as a result of short-term exposures, and are of short duration. "Chronic" effects generally occur as a result of long-term exposure, and are of long duration.

The acute effects referred to most frequently are those defined by the American National Standards Institute (ANSI) standard for Precautionary Labeling of Hazardous Industrial Chemicals (Z129.1-1988) - irritation, corrosivity, sensitization and lethal dose. Although these are important health effects, they do not adequately cover the considerable range of acute effects which may occur as a result of occupational exposure, such as, for example, narcosis.

Similarly, the term chronic effect is often used to cover only carcinogenicity, teratogenicity, and mutagenicity. These effects are obviously a concern in the workplace, but again, do not adequately cover the area of chronic effects, excluding, for example, blood dyscrasias (such as anemia), chronic bronchitis and liver atrophy.

The goal of defining precisely, in measurable terms, every possible health effect that may occur in the workplace as a result of chemical exposures cannot realistically be accomplished. This does not negate the need for employees to be informed of such effects and protected from them. Appendix B, which is also mandatory, outlines the principles and procedures of hazard assessment.

For purposes of this section, any chemicals which meet any of the following definitions, as determined by the criteria set forth in Appendix B are health hazards. However, this is not intended to be an exclusive categorization scheme. If there are available scientific data that involve other animal species or test methods, they must also be evaluated to determine the applicability of the HCS.

1. "Carcinogen." A chemical is considered to be a carcinogen if:

(a) It has been evaluated by the International Agency for Research on Cancer (IARC), and found to be a carcinogen or potential carcinogen; or

(b) It is listed as a carcinogen or potential carcinogen in the Annual Report on Carcinogens published by the National Toxicology Program (NTP) (latest edition); or,

(c) It is regulated by OSHA as a carcinogen.

2. "Corrosive." A chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. For example, a chemical is considered to

be corrosive if, when tested on the intact skin of albino rabbits by the method described by the U.S. Department of Transportation in appendix A to 49 CFR part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours. This term shall not refer to action on inanimate surfaces.

3. "Highly toxic:" A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose (LD(50)) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose (LD(50)) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration (LC(50)) in air of 200 parts per million by volume or less of gas or vapor, or 2 milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

4. "Irritant:" A chemical, which is not corrosive, but which causes a reversible inflammatory effect on living tissue by chemical action at the site of contact. A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for four hours exposure or by other appropriate techniques, it results in an empirical score of five or more. A chemical is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

5. "Sensitizer:" A chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

6. "Toxic." A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose (LD(50)) of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose (LD(50)) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration (LC(50)) in air of more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

7. "Target organ effects." The following is a target organ categorization of effects which may occur, including examples of signs and symptoms and chemicals which have been found to cause such effects. These examples are presented to illustrate the range and diversity of effects and hazards found in the workplace, and the broad scope employers must consider in this area, but are not intended to be all-inclusive.

a. Hepatotoxins: Chemicals which produce liver damage
Signs & Symptoms: Jaundice; liver enlargement
Chemicals: Carbon tetrachloride; nitrosamines

b. Nephrotoxins: Chemicals which produce kidney damage
Signs & Symptoms: Edema; proteinuria
Chemicals: Halogenated hydrocarbons; uranium

c. Neurotoxins: Chemicals which produce their primary toxic effects on the nervous system
Signs & Symptoms: Narcosis; behavioral changes; decrease in motor functions
Chemicals: Mercury; carbon disulfide

d. Agents which act on the blood or hemato-poietic system: Decrease hemoglobin function; deprive the body tissues of oxygen
Signs & Symptoms: Cyanosis; loss of consciousness
Chemicals: Carbon monoxide; cyanides

e. Agents which damage the lung: Chemicals which irritate or damage pulmonary tissue
Signs & Symptoms: Cough; tightness in chest; shortness of breath
Chemicals: Silica; asbestos

f. Reproductive toxins: Chemicals which affect the reproductive capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis)
Signs & Symptoms: Birth defects; sterility
Chemicals: Lead; DBCP

g. Cutaneous hazards: Chemicals which affect the dermal layer of the body
Signs & Symptoms: Defatting of the skin; rashes; irritation
Chemicals: Ketones; chlorinated compounds

h. Eye hazards: Chemicals which affect the eye or visual capacity

Signs & Symptoms: Conjunctivitis; corneal damage
Chemicals: Organic solvents; acids

Appendix B to §1910.1200--Health Determination (Mandatory)

The quality of a hazard communication program is largely dependent upon the adequacy and accuracy of the hazard determination. The hazard determination requirement of this standard is performance-oriented. Chemical manufacturers, importers, and employers evaluating chemicals are not required to follow any specific methods for determining hazards, but they must be able to demonstrate that they have adequately ascertained the hazards of the chemicals produced or imported in accordance with the criteria set forth in this Appendix.

Hazard evaluation is a process which relies heavily on the professional judgment of the evaluator, particularly in the area of chronic hazards. The performance-orientation of the hazard determination does not diminish the duty of the chemical manufacturer, importer or employer to conduct a thorough evaluation, examining all relevant data and producing a scientifically defensible evaluation. For purposes of this standard, the following criteria shall be used in making hazard determinations that meet the requirements of this standard.

1. "Carcinogenicity:" As described in paragraph (d)(4) of this section and Appendix A of this section, a determination by the National Toxicology Program, the International Agency for Research on Cancer, or OSHA that a chemical is a carcinogen or potential carcinogen will be considered conclusive evidence for purposes of this section. In addition, however, all available scientific data on carcinogenicity must be evaluated in accordance with the provisions of this Appendix and the requirements of the rule.

2. "Human data:" Where available, epidemiological studies and case reports of adverse health effects shall be considered in the evaluation.

3. "Animal data:" Human evidence of health effects in exposed populations is generally not available for the majority of chemicals produced or used in the workplace. Therefore, the available results of toxicological testing in animal populations shall be used to predict the health effects that may be experienced by exposed workers. In particular, the

definitions of certain acute hazards refer to specific animal testing results (see Appendix A).

4. "Adequacy and reporting of data." The results of any studies which are designed and conducted according to established scientific principles, and which report statistically significant conclusions regarding the health effects of a chemical, shall be a sufficient basis for a hazard determination and reported on any material safety data sheet. In vitro studies alone generally do not form the basis for a definitive finding of hazard under the HCS since they have a positive or negative result rather than a statistically significant finding.

The chemical manufacturer, importer, or employer may also report the results of other scientifically valid studies which tend to refute the findings of hazard.

Appendix C to §1910.1200--Information Sources (Advisory)

Editorial Note: The Federal Register of March 7, 1996, removed 1910.1200 Appendix C. [61 FR 9227, March 7, 1996]

Appendix D to §1910.1200--Definition of "Trade Secret" (Mandatory)

The following is a reprint of the "Restatement of Torts" section 757, comment b (1939):

b. "Definition of trade secret." A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see §759 of the Restatement of Torts which is not included in this Appendix) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operations of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

"Secrecy." The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which

the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

"Novelty and prior art." A trade secret may be a device or process which is patentable; but it need not be that. It may be a device or process which is clearly anticipated in the prior art or one which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patentability. These requirements are essential to patentability because a patent protects against unlicensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection it is not appropriate to require also the kind of novelty and invention which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this Section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from his past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resort to the secret, the wrongdoer's liability may be limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

Appendix E to §1910.1200--Guidelines for Employer Compliance (Advisory)

The Hazard Communication Standard (HCS) is based on a simple concept - that employees have both a need and a right to know the hazards and identities of the chemicals they are exposed to when working. They also need to know what protective measures are available to prevent adverse effects from occurring. The HCS is designed to provide employees with the information they need.

Knowledge acquired under the HCS will help employers provide safer workplaces for their employees. When employers have information about the chemicals being used, they can take steps to reduce exposures, substitute less hazardous materials, and establish proper work practices. These efforts will help prevent the occurrence of work-related illnesses and injuries caused by chemicals.

The HCS addresses the issues of evaluating and communicating hazards to workers. Evaluation of chemical hazards involves a number of technical concepts, and is a process that requires the professional judgment of experienced experts. That's why the HCS is designed so that employers who simply use chemicals, rather than produce or import them, are not required to evaluate the hazards of those chemicals. Hazard determination is the responsibility of the producers and importers of the materials. Producers and importers of chemicals are then required to provide the hazard information to employers that purchase their products.

Employers that don't produce or import chemicals need only focus on those parts of the rule that deal with establishing a workplace program and communicating information to their workers. This appendix is a general guide for such employers to help them determine what's required under the rule. It does not supplant or substitute for the regulatory provisions, but rather provides a simplified outline of the steps an average employer would follow to meet those requirements.

1. "Becoming Familiar With The Rule."

OSHA has provided a simple summary of the HCS in a pamphlet entitled "Chemical Hazard Communication," OSHA Publication Number 3084. Some employers prefer to begin to become familiar with the rule's requirements by reading this pamphlet. A copy may be obtained from your local OSHA Area Office, or by contacting the OSHA Publications Office at (202) 523-9667.

The standard is long, and some parts of it are technical, but the basic concepts are simple. In fact, the requirements reflect what many employers have been doing for years. You may find that you are already largely in compliance with many of the provisions, and will simply have to modify your existing programs somewhat. If you are operating in an OSHA-approved State Plan State, you must comply with the State's requirements, which may be different than those of the Federal rule. Many of the State Plan States had hazard communication or "right-to-know" laws prior to promulgation of the Federal rule. Employers in State Plan States should contact their State OSHA offices for more information regarding applicable requirements.

The HCS requires information to be prepared and transmitted regarding all hazardous chemicals. The HCS covers both physical hazards (such as flammability), and health hazards (such as irritation, lung damage, and cancer). Most chemicals used in the workplace have some hazard potential, and thus will be covered by the rule.

One difference between this rule and many others adopted by OSHA is that this one is performance-oriented. That means that you have the flexibility to adapt the rule to the needs of your workplace, rather than having to follow specific, rigid requirements. It also means that you have to exercise more judgment to implement an appropriate and effective program.

The standard's design is simple. Chemical manufacturers and importers must evaluate the hazards of the chemicals they produce or import. Using that information, they must then prepare labels for containers, and more detailed technical bulletins called material safety data sheets (MSDS).

Chemical manufacturers, importers, and distributors of hazardous chemicals are all required to provide the appropriate labels and material safety data sheets to the employers to which they ship the chemicals. The information is to be provided automatically. Every container of hazardous chemicals you receive must be labeled, tagged, or marked with the required information. Your suppliers must also send you a properly completed material safety data sheet (MSDS) at the time of the first shipment of the chemical, and with the next shipment after the MSDS is updated with new and significant information about the hazards.

You can rely on the information received from your suppliers. You have no independent duty to analyze the chemical or evaluate the hazards of it.

Employers that "use" hazardous chemicals must have a program to ensure the information is provided to exposed employees. "Use" means to package, handle, react, or transfer. This is an intentionally broad scope, and includes any situation where a chemical is present in such a way that employees may be exposed under normal conditions of use or in a foreseeable emergency.

The requirements of the rule that deal specifically with the hazard communication program are found in this section in paragraphs (e), written hazard communication program; (f), labels and other forms of warning; (g), material safety data sheets; and (h), employee information and training. The requirements of these paragraphs should be the focus of your attention. Concentrate on becoming familiar with them, using paragraphs (b), scope and application, and (c), definitions, as references when needed to help explain the provisions.

There are two types of work operations where the coverage of the rule is limited. These are laboratories and operations where chemicals are only handled in sealed containers (e.g., a warehouse). The limited provisions for these workplaces can be found in paragraph (b) of this section, scope and application. Basically, employers having these types of work operations need only keep labels on containers as they are received; maintain material safety data sheets that are received, and give employees access to them; and provide information and training for employees. Employers do not have to have written hazard communication programs and lists of chemicals for these types of operations.

The limited coverage of laboratories and sealed container operations addresses the obligation of an employer to the workers in the operations involved, and does not affect the employer's duties as a distributor of chemicals. For example, a distributor may have warehouse operations where employees would be protected under the limited sealed container provisions. In this situation, requirements for obtaining and maintaining MSDSs are limited to providing access to those received with containers while the substance is in the workplace, and requesting MSDSs when employees request access for those not received with the containers. However, as a distributor of hazardous chemicals, that employer will still have responsibilities for providing MSDSs to downstream customers at the time of the first shipment and when the MSDS is updated. Therefore, although they may not be required for the employees in the work operation, the distributor may, nevertheless, have to have MSDSs to satisfy other requirements of the rule.

2. "Identify Responsible Staff"

Hazard communication is going to be a continuing program in your facility. Compliance with the HCS is not a "one shot deal." In order to have a successful program, it will be necessary to assign responsibility for both the initial and ongoing activities that have to be undertaken to comply with the rule. In some cases, these activities may already be part of current job assignments. For example, site supervisors are frequently responsible for on-the-job training sessions. Early identification of the responsible employees, and involvement of them in the development of your plan of action, will result in a more effective program design. Evaluation of the effectiveness of your program will also be enhanced by involvement of affected employees.

For any safety and health program, success depends on commitment at every level of the organization. This is particularly true for hazard communication, where success requires a change in behavior. This will only occur if employers understand the program, and are committed to its success, and if employees are motivated by the people presenting the information to them.

3. "Identify Hazardous Chemicals in the Workplace."

The standard requires a list of hazardous chemicals in the workplace as part of the written hazard communication program. The list will eventually serve as an inventory of everything for which an MSDS must be maintained. At this point, however, preparing the list will help you complete the rest of the program since it will give you some idea of the scope of the program required for compliance in your facility.

The best way to prepare a comprehensive list is to survey the workplace. Purchasing records may also help, and certainly employers should establish procedures to ensure that in the future purchasing procedures result in MSDSs being received before a material is used in the workplace.

The broadest possible perspective should be taken when doing the survey. Sometimes people think of "chemicals" as being only liquids in containers. The HCS covers chemicals in all physical forms - liquids, solids, gases, vapors, fumes, and mists - whether they are "contained" or not. The hazardous nature of the chemical and the potential for exposure are the factors which determine whether a chemical is covered. If it's not hazardous, it's not covered. If there is no potential for exposure (e.g., the chemical is inextricably bound and cannot be released), the rule does not cover the chemical.

Look around. Identify chemicals in containers, including pipes, but also think about chemicals generated in the work operations. For example, welding fumes, dusts, and exhaust fumes are all sources of chemical exposures. Read labels provided by suppliers for hazard information. Make a list of all chemicals in the workplace that are potentially hazardous. For your own information and planning, you may also want to note on the list the location(s) of the products within the workplace, and an indication of the hazards as found on the label. This will help you as you prepare the rest of your program.

Paragraph (b) of this section, scope and application, includes exemptions for various chemicals or workplace situations. After compiling the complete list of chemicals, you should review paragraph (b) of this section to determine if any of the items can be eliminated from the list because they are exempted materials. For example, food, drugs, and cosmetics brought into the workplace for employee consumption are exempt. So rubbing alcohol in the first aid kit would not be covered.

Once you have compiled as complete a list as possible of the potentially hazardous chemicals in the workplace, the next step is to determine if you have received material safety data sheets for all of them. Check your files against the inventory you have just compiled. If any are missing, contact your supplier and request one. It is a good idea to document these requests, either by copy of a letter or a note regarding telephone conversations. If you have MSDSs for chemicals that are not on your list, figure out why. Maybe you don't use the chemical anymore. Or maybe you missed it in your survey. Some suppliers do provide MSDSs for products that are not hazardous. These do not have to be maintained by you.

You should not allow employees to use any chemicals for which you have not received an MSDS. The MSDS provides information you need to ensure proper protective measures are implemented prior to exposure.

4. "Preparing and Implementing a Hazard Communication Program"

All workplaces where employees are exposed to hazardous chemicals must have a written plan which describes how the standard will be implemented in that facility. Preparation of a plan is not just a paper exercise - all of the elements must be implemented in the workplace in order to be in compliance with the rule. See paragraph (e) of this section for the specific requirements regarding written hazard communication programs. The only work operations which do not have to comply with the written plan requirements are laboratories and work operations where employees only handle chemicals in sealed containers. See paragraph (b) of this section, scope and application, for the specific requirements for these two types of workplaces.

The plan does not have to be lengthy or complicated. It is intended to be a blueprint for implementation of your program -

an assurance that all aspects of the requirements have been addressed.

Many trade associations and other professional groups have provided sample programs and other assistance materials to affected employers. These have been very helpful to many employers since they tend to be tailored to the particular industry involved. You may wish to investigate whether your industry trade groups have developed such materials.

Although such general guidance may be helpful, you must remember that the written program has to reflect what you are doing in your workplace. Therefore, if you use a generic program it must be adapted to address the facility it covers. For example, the written plan must list the chemicals present at the site, indicate who is to be responsible for the various aspects of the program in your facility, and indicate where written materials will be made available to employees.

If OSHA inspects your workplace for compliance with the HCS, the OSHA compliance officer will ask to see your written plan at the outset of the inspection. In general, the following items will be considered in evaluating your program.

The written program must describe how the requirements for labels and other forms of warning, material safety data sheets, and employee information and training, are going to be met in your facility. The following discussion provides the type of information compliance officers will be looking for to decide whether these elements of the hazard communication program have been properly addressed:

A. "Labels and Other Forms of Warning"

In-plant containers of hazardous chemicals must be labeled, tagged, or marked with the identity of the material and appropriate hazard warnings. Chemical manufacturers, importers, and distributors are required to ensure that every container of hazardous chemicals they ship is appropriately labeled with such information and with the name and address of the producer or other responsible party. Employers purchasing chemicals can rely on the labels provided by their suppliers. If the material is subsequently transferred by the employer from a labeled container to another container, the employer will have to label that container unless it is subject to the portable container exemption. See paragraph (f) of this section for specific labeling requirements.

The primary information to be obtained from an OSHA-required label is an identity for the material, and appropriate hazard warnings. The identity is any term which appears on the label, the MSDS, and the list of chemicals, and thus links these three sources of information. The identity used by the supplier may be a common or trade name ("Black Magic Formula"), or a chemical name (1,1,1-trichloroethane). The hazard warning is a brief statement of the hazardous effects of the chemical ("flammable," "causes lung damage"). Labels frequently contain other information, such as precautionary measures ("do not use near open flame"), but this information is provided voluntarily and is not required by the rule. Labels must be legible, and prominently displayed. There are no specific requirements for size or color, or any specified text.

With these requirements in mind, the compliance officer will be looking for the following types of information to ensure that labeling will be properly implemented in your facility:

1. Designation of person(s) responsible for ensuring labeling of in-plant containers;
2. Designation of person(s) responsible for ensuring labeling of any shipped containers;
3. Description of labeling system(s) used;
4. Description of written alternatives to labeling of inplant containers (if used); and,
5. Procedures to review and update label information when necessary.

Employers that are purchasing and using hazardous chemicals - rather than producing or distributing them - will primarily be concerned with ensuring that every purchased container is labeled. If materials are transferred into other containers, the employer must ensure that these are labeled as well, unless they fall under the portable container exemption (paragraph (f)(7) of this section). In terms of labeling systems, you can simply choose to use the labels provided by your suppliers on the containers. These will generally be verbal text labels, and do not usually include numerical rating systems or symbols that require special training. The most important thing to remember is that this is a continuing duty - all in-plant containers of hazardous chemicals must always be labeled. Therefore, it is important to designate someone to be responsible for ensuring that the labels are maintained as required on the containers in your facility, and that newly purchased materials are checked for labels prior to use.

B. "Material Safety Data Sheets"

Chemical manufacturers and importers are required to obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Distributors are responsible for ensuring that their customers are provided a copy of these MSDSs. Employers must have an MSDS for each hazardous chemical which they use. Employers may rely on the information received from their suppliers. The specific requirements for material safety data sheets are in paragraph (g) of this section. There is no specified format for the MSDS under the rule, although there are specific information requirements. OSHA has developed a nonmandatory format, OSHA Form 174, which may be used by chemical manufacturers and importers to comply with the rule. The MSDS must be in English. You are entitled to receive from your supplier a data sheet which includes all of the information required under the rule. If you do not receive one automatically, you should request one. If you receive one that is obviously inadequate, with, for example, blank spaces that are not completed, you should request an appropriately completed one. If your request for a data sheet or for a corrected data sheet does not produce the information needed, you should contact your local OSHA Area Office for assistance in obtaining the MSDS.

The role of MSDSs under the rule is to provide detailed information on each hazardous chemical, including its potential hazardous effects, its physical and chemical characteristics, and recommendations for appropriate protective measures. This information should be useful to you as the employer responsible for designing protective programs, as well as to the workers. If you are not familiar with material safety data sheets and with chemical terminology, you may need to learn to use them yourself. A glossary of MSDS terms may be helpful in this regard. Generally speaking, most employers using hazardous chemicals will primarily be concerned with MSDS information regarding hazardous effects and recommended protective measures. Focus on the sections of the MSDS that are applicable to your situation.

MSDSs must be readily accessible to employees when they are in their work areas during their workshifts. This may be accomplished in many different ways. You must decide what is appropriate for your particular workplace. Some employers keep the MSDSs in a binder in a central location (e.g., in the pick-up truck on a construction site). Others, particularly in workplaces with large numbers of chemicals, computerize the information and provide access through terminals. As long as employees can get the information when they need it, any approach may be used. The employees must have access to the MSDSs themselves - simply having a system where the information can be read to them over the

phone is only permitted under the mobile worksite provision, paragraph (g)(9) of this section, when employees must travel between workplaces during the shift. In this situation, they have access to the MSDSs prior to leaving the primary worksite, and when they return, so the telephone system is simply an emergency arrangement.

In order to ensure that you have a current MSDS for each chemical in the plant as required, and that employee access is provided, the compliance officers will be looking for the following types of information in your written program:

1. Designation of person(s) responsible for obtaining and maintaining the MSDSs;
2. How such sheets are to be maintained in the workplace (e.g., in notebooks in the work area(s) or in a computer with terminal access), and how employees can obtain access to them when they are in their work area during the work shift;
3. Procedures to follow when the MSDS is not received at the time of the first shipment;
4. For producers, procedures to update the MSDS when new and significant health information is found; and,
5. Description of alternatives to actual data sheets in the workplace, if used.

For employers using hazardous chemicals, the most important aspect of the written program in terms of MSDSs is to ensure that someone is responsible for obtaining and maintaining the MSDSs for every hazardous chemical in the workplace. The list of hazardous chemicals required to be maintained as part of the written program will serve as an inventory. As new chemicals are purchased, the list should be updated. Many companies have found it convenient to include on their purchase orders the name and address of the person designated in their company to receive MSDSs.

C. "Employee Information and Training"

Each employee who may be "exposed" to hazardous chemicals when working must be provided information and trained prior to initial assignment to work with a hazardous chemical, and whenever the hazard changes. "Exposure" or "exposed" under the rule means that "an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (e.g., accidental or possible) exposure." See paragraph (h) of this section for specific requirements. Information and training may be done either by individual chemical, or by categories of hazards (such as flammability or carcinogenicity). If there are only a few chemicals in the workplace, then you may want to discuss each one individually. Where there are large numbers of chemicals, or the chemicals change frequently, you will probably want to train generally based on the hazard categories (e.g., flammable liquids, corrosive materials, carcinogens). Employees will have access to the substancespecific information on the labels and MSDSs.

Information and training is a critical part of the hazard communication program. Information regarding hazards and protective measures are provided to workers through written labels and material safety data sheets. However, through effective information and training, workers will learn to read and understand such information, determine how it can be obtained and used in their own workplaces, and understand the risks of exposure to the chemicals in their workplaces as well as the ways to protect themselves. A properly conducted training program will ensure comprehension and understanding. It is not sufficient to either just read material to the workers, or simply hand them material to read. You want to create a climate where workers feel free to ask questions. This will help you to ensure that the information is understood. You must always remember that the underlying purpose of the HCS is to reduce the incidence of chemical source illnesses

and injuries. This will be accomplished by modifying behavior through the provision of hazard information and information about protective measures. If your program works, you and your workers will better understand the chemical hazards within the workplace. The procedures you establish regarding, for example, purchasing, storage, and handling of these chemicals will improve, and thereby reduce the risks posed to employees exposed to the chemical hazards involved. Furthermore, your workers' comprehension will also be increased, and proper work practices will be followed in your workplace.

If you are going to do the training yourself, you will have to understand the material and be prepared to motivate the workers to learn. This is not always an easy task, but the benefits are worth the effort. More information regarding appropriate training can be found in OSHA Publication No. 2254 which contains voluntary training guidelines prepared by OSHA's Training Institute. A copy of this document is available from OSHA's Publications Office at (202) 219-4667. In reviewing your written program with regard to information and training, the following items need to be considered:

1. Designation of person(s) responsible for conducting training;
2. Format of the program to be used (audiovisuals, classroom instruction, etc.);
3. Elements of the training program (should be consistent with the elements in paragraph (h) of this section); and,
4. Procedure to train new employees at the time of their initial assignment to work with a hazardous chemical, and to train employees when a new hazard is introduced into the workplace.

The written program should provide enough details about the employer's plans in this area to assess whether or not a good faith effort is being made to train employees. OSHA does not expect that every worker will be able to recite all of the information about each chemical in the workplace. In general, the most important aspects of training under the HCS are to ensure that employees are aware that they are exposed to hazardous chemicals, that they know how to read and use labels and material safety data sheets, and that, as a consequence of learning this information, they are following the appropriate protective measures established by the employer. OSHA compliance officers will be talking to employees to determine if they have received training, if they know they are exposed to hazardous chemicals, and if they know where to obtain substancespecific information on labels and MSDSs.

The rule does not require employers to maintain records of employee training, but many employers choose to do so. This may help you monitor your own program to ensure that all employees are appropriately trained. If you already have a training program, you may simply have to supplement it with whatever additional information is required under the HCS. For example, construction employers that are already in compliance with the construction training standard (29 CFR 1926.21) will have little extra training to do.

An employer can provide employees information and training through whatever means are found appropriate and protective. Although there would always have to be some training on-site (such as informing employees of the location and availability of the written program and MSDSs), employee training may be satisfied in part by general training about the requirements of the HCS and about chemical hazards on the job which is provided by, for example, trade associations, unions, colleges, and professional schools. In addition,

previous training, education and experience of a worker may relieve the employer of some of the burdens of informing and training that worker. Regardless of the method relied upon, however, the employer is always ultimately responsible for ensuring that employees are adequately trained. If the compliance officer finds that the training is deficient, the employer will be cited for the deficiency regardless of who actually provided the training on behalf of the employer.

D. "Other Requirements"

In addition to these specific items, compliance officers will also be asking the following questions in assessing the adequacy of the program:

Does a list of the hazardous chemicals exist in each work area or at a central location?

Are methods the employer will use to inform employees of the hazards of non-routine tasks outlined?

Are employees informed of the hazards associated with chemicals contained in unlabeled pipes in their work areas?

On multi-employer worksites, has the employer provided other employers with information about labeling systems and precautionary measures where the other employers have employees exposed to the initial employer's chemicals?

Is the written program made available to employees and their designated representatives?

If your program adequately addresses the means of communicating information to employees in your workplace, and provides answers to the basic questions outlined above, it will be found to be in compliance with the rule.

5. "Checklist for Compliance"

The following checklist will help to ensure you are in compliance with the rule:

- Obtained a copy of the rule..... _____
- Read and understood the requirements _____
- Assigned responsibility for tasks. _____
- Prepared an inventory of chemicals..... _____
- Ensured containers are labeled..... _____
- Obtained MSDS for each chemical..... _____
- Prepared written program _____
- Made MSDSs available to workers..... _____
- Conducted training of workers _____
- Established procedures to maintain current program..... _____
- Established procedures to evaluate effectiveness _____

6. "Further Assistance"

If you have a question regarding compliance with the HCS, you should contact your local OSHA Area Office for assistance. In addition, each OSHA Regional Office has a Hazard Communication Coordinator who can answer your questions. Free consultation services are also available to assist employers, and information regarding these services can be obtained through the Area and Regional offices as well.

The telephone number for the OSHA office closest to you should be listed in your local telephone directory. If you are not able to obtain this information, you may contact OSHA's Office of Information and Consumer Affairs at (202) 219-8151 for further assistance in identifying the appropriate contacts.

[52 FR 31877, Aug. 24, 1987; 52 FR 46080, Dec. 4, 1987; 53 FR 15035, Apr. 27, 1988; 54 FR 6888, Feb. 15, 1989; 54 FR 24334, June 7, 1989; 59 FR 6170, Feb. 9, 1994; 59 FR 17479, April 13, 1994; 59 FR 65947, Dec. 22, 1994; 61 FR 5507, Feb. 13, 1996; 61 FR 9227, March 7, 1996]

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This Workplace Covered by the Michigan Right To Know Law



"Serving Michigan...Serving You"

Michigan Department Of Consumer & Industry Services

Employers must make available for employees in a readily accessible manner, Material Safety Data Sheets (MSDS)* for those hazardous chemicals in their workplace.

Employees cannot be discharged or discriminated against for exercising their rights including the request for information on hazardous chemicals.

Employees must be notified and given direction (by employer posting) for locating Material Safety Data Sheets and the receipt of new or revised MSDS(s).

* Employees may also request MSDS from the Michigan Department of Consumer Industry & Services, Bureau of Safety & Regulation, Occupational Health Division, 7150 Harris Dr., PO Box 30649, Lansing, Michigan 48909-8149, (517) 322-1608



MICHIGAN
Michigan Occupational Safety and Health Act

BSR/CET #2105 (Rev. 03/02)

MSDS(s) For This Workplace Are Located At

LOCATION(S)

LOCATION(S)

PERSON(S) responsible for MSDS(S)

PHONE



TO BE POSTED THROUGHOUT THE

LOCATION OF NEW OR
REVISED MSDS

RECEIPT DATE

LOCATION OF NEW OR
REVISED MSDS

"Serving Michigan...Serving You"

Bureau of Safety & Regulation

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